IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(Chapter VIII, Rule 32 (2) (b)
Description of Case

Writ Petition No. 152 of 2007 (S/B)

Dated of decision: 2nd July, 2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date: Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No. 152 of 2007 (S/B)

Shri P.K Shah aged about 53 years S/o Shri J.N. Shah,
Presently Posted as Superintendent Engineer,
Uttarakhand Jal Sansthan, Haldwani,
District Nainital ……. Petitioner

Versus

1. State of Uttarakhand through Secretary Payjal,
   Government of Uttaranchal, Dehradun.
2. Additional Secretary,
   Uttarakhand Payjal,
   Government of Uttarakhand, Dehradun.
3. Chief General Manager,
   Uttarakhand Jal Sansthan, Jal Bhawan,
   B-Block, Nehru Colony, Dehradun.
4. General Manager,
   Uttarakhand Jal Sansthan, Nainital
   District Nainital ……Respondents

…….

Sri. Pankaj Purohit, Advocate for the petitioner.
Sri Subhash Upadhyaya, Brief Holder for the respondents 1 and 2.
Sri Rakesh Thapaliyal, Advocate for respondent no. 3.
Sri J.P. Joshi, Advocate for respondent no.4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Sri. Pankaj Purohit, Advocate for the petitioner.

Sri Subhash Upadhyaya, Brief Holder for respondents 1 and 2.

Sri Rakesh Thapaliyal, Advocate for respondent no. 3.

Sri J.P. Joshi, Advocate for respondent no.4.

They are heard on admission.

2. Petitioner P.K. Shah has filed this writ petition for the following reliefs:

"a. Issue a writ, order or direction in the nature of *Certiorari* to call for the record and to quash the impugned transfer order contained in letter No. 594 / XXIX (1) / 07 / (19Adhi) / 2006 passed by Additional Secretary, the respondent no. 2 contained in Annexure No. 5;

b. Issue a writ, order or direction in the nature of *Mandamus* commanding the respondents not to disturb in the peaceful functioning of the petitioner as Superintendent Engineer in Uttarakhand Jal Sansthan, Haldwani, District Nainital;

c. Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

d. Award costs of the petition to the petitioner."

3. The petitioner, in substance, is challenging the impugned order dated 27.06.2007 (Annexure 5) whereby the petitioner stands transferred from Haldwani to Almora.

4. Sri Pankaj Purohit, the learned counsel for the petitioner, vehemently argued that the impugned order of petitioner's transfer is not sustainable as the petitioner has been transferred within a period of 1½ years of his joining at his present place of posting i.e. Haldwani and as such the transfer order, being violative of the transfer policy, is bad in law.

5. The Apex Court in the case of **Major General J.K. Bansal Vs. Union of India and others** reported in **2005 (7) SCC 227,** while considering the scope of interference in the matter of transfer of a Government servant, observed in paras 8 to 11:

"8. Before we advert to the submissions made by the learned counsel for the appellant, it will be useful to take notice of law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer.

9. In Shilpi Bose v. State of Bihar the appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under:

"4.*In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable*

to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

10. In Union of India v. S.L. Abbas the respondent was working at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Puri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3-4-1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

11. Similar view has been taken in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan wherein it has been held that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the Appellate Authorities substituting their own decision for that of the management."

6. Reverting to the case in hand, the petitioner has not even alleged in the writ petition that the petitioner's transfer is actuated by malice.

7. From the above quoted dictum of the Apex Court, it is apparent that the transfer policy is not enforceable in the Court of law.

8. In this view of the matter, we do not find any infirmity in the impugned order of petitioner's transfer from Haldwani to Almora which may warrant interference.

9. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
02. 07. 2007 02. 07. 2 007

A